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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
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+Admitted to Maryland only
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*Communications engineer
(non lawyer)

August 4, 1997

VIA HAND DELIVERY

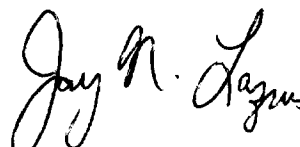
Mr. William Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Reply Comments
WT Docket No. 97-112
CC Docket No. 90-6

Dear Mr. Caton:

Enclosed please find an original and 9 copies of PetroCom's reply comments in the above referenced proceeding. Please stamp received the file copy of the Reply Comments and return it to the courier.

Very truly yours,


Jay N. Lazrus

Enclosures

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Date of Original rec'd

ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

6-11-97

100-112-112

In the Matter of)	
)	
Cellular Service and Other)	WT Docket No. 97-112
Commercial Mobile Radio Services)	
in the Gulf of Mexico)	
)	
Amendment of Part 22 of the)	CC Docket No. 90-6
Commission's Rules to Provide)	
for Filing and Processing)	
of Applications for Unserved)	
Areas in the Cellular Service)	
and to Modify Other Cellular Rules)	

To: The Commission

REPLY COMMENTS OF PETROLEUM COMMUNICATIONS, INC.

Submitted by:

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Jay N. Lazrus

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August 4, 1997

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SUMMARY

Petroleum Communications, Inc. ("PetroCom"), one of the two carriers licensed to provide cellular service in the Gulf of Mexico Service Area ("GMSA"), submits reply comments with respect to the Commission's Second Further Notice of Proposed Rulemaking ["Second FNPR"] regarding new rules for cellular licensing for the GMSA.

Six cellular land-based carriers submitted plans or proposals ("Plans"), in whole or in part, delineating rules that should apply with respect to the provision of cellular service in the GMSA. Some Plans propose replacing the Commission's suggested Coastal and Exclusive Zones with annexation of the Coastal Zone by the land-based carriers. Most Plans oppose the use of a hybrid formula to calculate the contours of sites that partly cover water. Finally, the Plans argue that the Commission's proposals to allow Gulf carriers to place transmitters on land is either unwise or unnecessary. The Plans, without exception, fail to achieve the goals of the Commission as set forth in the Second FNPR. Although the Plans may achieve one goal, the provision of quality service in the Gulf, they reduce the regulatory flexibility to Gulf carriers another goal.

Further, these Plans fail to take into account the rights of the Gulf carriers. The Coastal Zone has been part of the licensed territory of the Gulf carriers since their licenses were issued. Second, a hybrid formula is necessary to minimize the likelihood of interference between land-based and Gulf operations. Finally, use of land transmitters has been a system design tool that has long denied Gulf carriers. If Gulf carriers are to have an opportunity to serve their market after the adoption of new rules for the GMSA, then land transmitters will be an important part of their plans. For these reasons, the Plans will not fairly resolve the conflicts between land-based and Gulf carriers, the third Commission goal of the Second FNPR.

PetroCom suggests that its proposal, as described in its comments filed in the Second FNPR proceeding, meets the goals of the Commission. Therefore, PetroCom respectfully suggests that the Commission adopt PetroCom's rules.

With respect to the provision of new services in the Gulf, the majority of those commenting on this issue suggest that no new spectrum be licensed in the Gulf at this time. This conclusion is validated by the Darby Report, which is the only demand study submitted by any commenter in these proceedings. PetroCom respectfully suggests that the Commission adopt this conclusion.

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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To: The Commission

REPLY COMMENTS OF PETROLEUM COMMUNICATIONS, INC.

Petroleum Communications, Inc. ("PetroCom"), by its attorneys, hereby submits its reply comments in the captioned proceedings in response to the Commission's Second Further Notice of Proposed Rulemaking, FCC 97-110, released on April 16, 1997 ("Second FNPR").

I. INTRODUCTION

PetroCom, as one of two carriers licensed by the Commission to provide cellular radio telephone service in the Gulf of Mexico, is one of the parties that will be most affected by the rules finally adopted. After reviewing the comments filed in these proceedings, especially those filed by land-based cellular licensees, PetroCom would characterize their comments generally dis-serving the Commission's goals.¹ The land-based licensees have seized upon

¹ "Our principal goals in this proceeding are (1) to establish a comprehensive regulatory scheme that will reduce conflict between water-based and land-based carriers, (2) to provide regulatory flexibility to Gulf carriers because of the transitory nature of water-based sites, and (3) to award licenses to serve well-traveled coastal areas to those

this rulemaking, a direct result of the remand from the Court of Appeals to the Commission to reexamine its policies in the Gulf,² as a virtual candy store, making an unsubtle attempt to obtain territory at the expense of the Gulf carriers. PetroCom has consistently tried to work with land-based carriers in good faith to resolve conflicts, and is thus dismayed at the attempt by some land-based carriers to blatantly grab part of PetroCom's most valuable asset, its licensed service area. PetroCom respectfully suggests that the Commission, in adopting final rules, consider which proposals meets its goals in these proceedings and most fairly resolve the differences between land-based and Gulf carriers. PetroCom's replies to specific comments are set forth below.

II. Licensing Proposals For Cellular Service In The Gulf

A. The AT&T Plan

1. The proposed plan of AT&T Wireless Services, Inc. (AT&T) for cellular licensing in the Gulf would replicate licensing rules established for the wireless communications service ("WCS"). Thus, the Coastal Zone would be incorporated into the licensed territories of the land-based carriers.³ Only existing land-based

carriers that value the spectrum most highly and will maximize its use to provide the best quality of service to the public." Second FNPRM at para. 2.

² See Petroleum Communications, Inc. V. FCC, 22 F.3d 1164, 1173 (D.C. Cir. 1994).

³ AT&T comments, p. 2.

licensees would be allowed to serve the Gulf Coastal Zone, although all Gulf and land-based service area boundaries that extend into the Coastal Zone would be grand fathered, as well as existing Service Area Boundary ("SAB") extensions into the Exclusive Zone unless and until the GMSA carrier establishes CGSA in those areas.⁴ An Exclusive Zone for Gulf carriers would begin 12 nautical miles from the shoreline.⁵ Under no circumstances would GMSA carriers be allowed to locate cell sites within the CGSAs of land-based carriers without consent.⁶ This plan, according to AT&T, would make a hybrid propagation formula unnecessary.⁷

2. The AT&T plan is flawed for several reasons. First, it fails to take into account the fact that the "real-world" service contours of land-based carriers, based on propagation characteristics for the Gulf area, presently intrude into actual service areas of Gulf carriers, thus capturing the traffic of Gulf carriers.⁸ The declaration attached to AT&T's comments acknowledges that applying a new hybrid formula to contours that

⁴ AT&T comments, pp. 3-4.

⁵ AT&T comments, pp. 4-5.

⁶ AT&T comments, pp. 6-8.

⁷ AT&T comments, pp. 9-10.

⁸ The contour of the A-side land-based carrier in the Texas 20 RSA is a good example.

extend partially over water would require AT&T to decrease power on its Gulf-bordering sites.⁹

3. Second, if existing land-based sites are grand fathered using the current §22.911(a)(1) SAB formula (32 dBu) rather than a hybrid formula, and Gulf sites are grand fathered using the GMSA formula (which predicts a contour where the receive signal averages 28 dBu), the land-based carrier's CGSA will have a sizeable 4 dB advantage over the CGSA Gulf carriers and capture their traffic. The issue here is not whether a customer will obtain service, but from which carrier. PetroCom submits that fairness requires using the hybrid propagation formula for all radials for all radials directed to the water from all sites within 35 miles of the coastline, regardless of whether the contour is generated by land-based or Gulf sites. Otherwise, the GMSA formula for Gulf carriers becomes useless. Grand fathering existing sites without subjecting land and Gulf carriers to the same formula simply takes away service area from the Gulf carriers and gives it to the land-based carriers without any public interest justification. The better approach, more consistent with AT&T's position regarding SAB extensions into the Exclusive Zone,¹⁰ would be to permit SAB extensions into the Coastal Zone unless the GMSA carrier has

⁹ AT&T comments, Declaration, pp. 3-4.

¹⁰ AT&T comments, p. 3.

established CGSA in those areas.¹¹ In this regard, a hybrid formula is absolutely essential in the scenario of grand fathering existing sites regardless of how market boundaries are drawn. Grand fathering using a hybrid formula may result in pull-backs by either land-based or Gulf carriers, or both, but not in a reduction in service to users. Applying a hybrid formula to land-based carriers would not be complex,¹² and represents the fairest way of resolving a major source of friction between land and Gulf carriers.

4. AT&T's proposal to use WCS boundaries to newly define the land-based carrier's markets is not well-supported. There is no reason why market boundaries of competing services must be the same in the interest of "regulatory parity"¹³ and, of course, the market boundaries have never been the same in any event. Moreover, proposing to give land-based carriers WCS boundaries ignores what has occurred during the twelve years of FCC's cellular licensing

¹¹ PetroCom also proposes that GMSA carriers have recovery rights in the Coastal Zone in the event a platform is relocated or taken out of service. PetroCom comments, p. 9.

¹² See Attachment A hereto.

¹³ The regulatory parity provisions of the Omnibus Budget Reconciliation Act of 1993 state that the Commission shall modify its regulations "as may be necessary and practical to assure that licensees in [a private land mobile service that becomes a commercial mobile service] are subjected to technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services." Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §6002(d)(3), 107 Stat. 312, 392 (1993). Even if this provision were applicable to a comparison of PCS and cellular licensees (neither of which were ever classified as a private service), what is required is parity of technical rules within service areas, not service areas themselves.

rules and policies in the Gulf, namely, the Gulf carriers' deployment of a substantial number of cell sites that provide service to the proposed Coastal Zone. The AT&T plan is flawed because it asks the Commission to simply rely exclusively on the land-based licensees' willingness to fill-in any areas that may still happen to be unserved with extensions from land-based facilities.¹⁴ Such a proposal is contrary to the goal of ensuring continuous coverage. No cellular market exists where the Commission has decided to rely on an incumbent indefinitely to provide service.

5. Further, the AT&T plan provides no rationale for an absolute prohibition on land-based sites installed by GMSA licensees. AT&T's concern is that such sites will capture AT&T's customer traffic.¹⁵ However, there may be cases where a Gulf carrier can locate facilities on land in a manner that will not capture the land-based carrier's traffic. Further, there may be instances where, pursuant to a co-location agreement or consensual extension agreement, a Gulf carrier could locate facilities on land while capturing some of the land-based carrier's traffic. Such sites should be permitted, as proposed by PetroCom.¹⁶

¹⁴ AT&T comments, pp. 4-5.

¹⁵ AT&T comments, pp. 8-9

¹⁶ See PetroCom comments, p. 12-14.

B. The GTE Plan

6. The plan proposed by GTE Service Corporation ("GTE") would eliminate the Coastal Zone by expanding the licensed territory of the land-based carriers to include the part of the Gulf of Mexico within 25 miles of the shore from the southernmost part of Texas to the Florida Panhandle and within 50 miles from the shore in Florida below the Panhandle.¹⁷ The GMSA would begin at that boundary and encompass the remaining Gulf waters.¹⁸ This plan would be accomplished by requiring the Gulf carriers to withdraw from this territory.¹⁹ The CGSA of cells with contours extending mostly water would be calculated using the Commission's current Gulf water propagation model. Phase II licensing for unserved area in the land-based carrier's expanded licensed area would not commence until the land-based carrier has had a reasonable time to cover its expanded territory.²⁰

7. GTE attempts to justify its plan by several premises, none of which are valid. First, GTE claims that under the current rules which set the boundary between land-based and water-based licensees at the shore, the water-based carrier is sometimes the dominant

¹⁷ GTE comments, p. 8.

¹⁸ GTE comments, p. 11.

¹⁹ GTE comments, p. 12.

²⁰ GTE comments, pp. 12-13.

signal on the beach.²¹ Except in isolated cases, this claim does not make sense from an engineering standpoint. As GTE states, its signal at the shore (equivalent to a 32 dBu contour) is -97 dBm. However, the water-based carrier's signal at the shore is -101 dBm (based on the 4 dB difference between the land-based SAB calculation and the Gulf calculation). Therefore, GTE's signal should always be stronger at the shore.

8. GTE further states that the -97 dBm signal is too weak to be picked up by portable cellular phones, which require power levels of at least -80 dBm.²² While this statement may be accurate, it also means that water-based carrier's signal is too weak to be picked up. The simpler and fairer solution to the problem is for the land-based and water-based carriers to co-locate or reach consensual agreements regarding extensions. Since these solutions also make it easier for the water-based carrier to serve its licensed territory, the solutions represent a win-win situation.

9. GTE also claims that it is not technically feasible to set the boundary at the shoreline. PetroCom disputes that claim and suggests that the boundary can be easily set at the shoreline if the Commission adopts its hybrid propagation formula proposal and requires the land-based and water-based carriers to both use the hybrid propagation formula for radials extending into the water.

²¹ GTE comments, p. 4.

²² GTE comments, p. 4.

10. GTE claims, without substantiation, that the customers boating in the Gulf are most likely the customers of the land-based licensees in the markets adjacent to the Gulf. This argument is similar to arguing that a MSA licensee should be permitted to extend its licensed area into the neighboring RSA because the MSA's business customers travel home each night to the RSA. Even if this claim regarding boaters is true, it totally ignores the oil platforms which also occupy that area on the western half of the Gulf. In PetroCom's experience, customers on the oil platforms make up the bulk of the traffic in these areas.

11. Equally without merit is GTE's assertion that for competitive reasons, land-based cellular carriers need the same Gulf boundaries as other CMRS carriers.²³ It is a tenuous stretch of the concept of regulatory parity to argue that regulatory parity requires that the Commission take the territory of one licensee and hand it to another. If this "taking" were mandated by regulatory parity, then the logical extension of that argument would be that the Commission must take all like services (cellular, PCS, 800 MHZ SMR and WCS, for example) and create identical licensing schemes, rather than the varied licensing design (MSA/RSA, MTA/BTA and EA) that currently exists.

12. Without citing the official or study which provided the information, GTE cites information supplied by the Coast Guard that

²³ GTE comments, p. 7.

demonstrates that boaters regularly travel beyond 12 miles and that cellular phones, where service is available, are most often used in placing marine rescue calls. Contrary to this information, PetroCom's counsel was told by Paul Steward of the Coast Guard Search and Rescue staff that Coast Guard statistics on boat travel are based on where rescues occur and where the Coast Guard conducts enforcement operations. The Coast Guard's statistics show that the majority of rescues occur within 12 miles of shore and the majority of enforcement operations occur within 20 miles of shore. In determining the boundary of the Coastal Zone, it would make more sense to decide the boundary based on where rescues occur than on where enforcements occur, since no public policy supports providing seamless cellular service to boaters requiring investigation. In addition, the most commonly used means of communications in distress situations is VHF (FM) radios. Further, the Coast Guard does not advocate the use of cellular phones in distress situations since the call goes to land safety provider, rather than directly to the Coast Guard, thereby delaying rescue operations.

13. Equally spurious is GTE's claim that the boundary below the Florida Panhandle should be 50 miles.²⁴ While land transmitters may be able transmit 50 miles, 0.6 watt hand-held mobile phones (the type used most often today) cannot transmit back that far. Further, with respect to PetroCom, it is not valid to argue a claim

²⁴ GTE comments, pp. 10-11.

to that territory because PetroCom does not have sites in that area. PetroCom has been unable to serve that area due to the Commission's failure to act on its extension application for 7 years.²⁵ Further, as shown above, this boundary is not supported by Gulf traffic.

14. Since GTE's plan is based on invalid premises, it follows that its suggestion that Gulf carriers must withdraw their coverage extending into the land-based carrier's extended territory is equally invalid.

15. PetroCom agrees with GTE that the Commission's water propagation formula should be applied to sectors covering mostly water.²⁶ However, PetroCom further suggests that propagation contours would be more reliable if the formula were applied to all sectors which cover water.²⁷

C. The Bell South Plan

16. The plan set forth by BellSouth Corporation ("BellSouth"), similar to AT&T's and GTE's, is to incorporate the proposed Coastal Zone into existing cellular markets adjacent to the Gulf by extending land-based cellular and all other wireless market boundaries 12 miles into the Gulf.²⁸ Incumbent GMSA

²⁵ See PetroCom comments, pp. 3-4.

²⁶ GTE comments, p. 12.

²⁷ See PetroCom comments, pp. 9-11.

²⁸ BellSouth comments, pp. 4-10.

licensees would have 60 days from issuance of an order in this proceeding to file SIU maps which depict actual coverage within each MSA/RSA, as redefined. GMSA licensees could incorporate any areas where they are providing service, and which remain unclaimed by land-based carriers, into their CGSA for the Exclusive Zone. Any areas not depicted as served by these SIU maps would be available for immediate Phase II licensing under current Phase II licensing rules.²⁹ A GMSA licensee would be permitted to use land-based transmitter locations unless the site is in another licensee's CGSA or in a market for which the five year fill-in period has not expired, otherwise, consent of the land-based carrier would be required.³⁰

17. The BellSouth plan suffers from the same weaknesses as AT&T's plan. First, nothing supports the notion that the market boundaries of cellular and PCS licensees must be the same in order to satisfy the requirements of regulatory parity. If that were the case, PCS markets would have been defined as MSAs and RSAs, rather than MTAs and BTAs. Market boundaries differ across the wireless services. That is a fact of life. Regulatory parity only requires that the services offered within these boundaries be subjected to similar technical rules when

²⁹ BellSouth comments, pp. 11-12.

³⁰ BellSouth comments, p12, n. 33.

appropriate.³¹ As part of its ploy to grab additional service territory under the guise of "regulatory parity," BellSouth conveniently ignores the fact that the GMSA licensees' have over the past decade already deployed substantial facilities serving Coastal Zone areas.

18. BellSouth makes a number of unsupported assertions in attempting to support its boundary proposal. It argues, for example, that PCS licensees, with a boundary that extends into the Gulf, will have a "substantial marketing advantage over cellular licensees."³² BellSouth fails to account for the advantage it has in already providing service ahead of PCS providers. Nor does BellSouth recognize that GMSA licensees already serve areas in the Coastal Zone because it is part of their licensed service areas, and PCS licensees therefore may enjoy no marketing advantage over GMSA cellular licensees.

19. BellSouth further asserts that giving the proposed Coastal Zone to land-based carriers will ensure seamless coverage.³³ BellSouth ignores that such coverage already exists.³⁴ Further, with the appropriate rules in place that

³¹ See footnote 13, *supra*.

³² BellSouth comments, p. 6.

³³ BellSouth comments, p. 7.

³⁴ With respect to the eastern side of the GMSA, PetroCom as the A-side GMSA licensee has been unable to provide any service because the Commission has yet to grant its CGSA extension application.

fairly protect the service areas land-based and GMSA licensees (through a hybrid propagation formula) while allowing each to deploy facilities on land or in water, the Commission can implement a Phase II licensing process which ensures that unserved areas, if any, can receive service.³⁵ Seamless service, however, certainly does not depend simply on taking the proposed Coastal Zone from GMSA licensees and giving it to land-based carriers. Nor do BellSouth's unsubstantiated claims of being able to offer lower-cost service support the draconian action of cutting up the current service territory of GMSA licensees and giving it away (for free) to corporate behemoths like BellSouth.³⁶

20. What BellSouth's plan lacks most significantly is a hybrid propagation formula that treats contour extensions of adjacent markets alike, whether the extension is generated by a land-based carrier or Gulf carrier. With a hybrid propagation formula, the Commission's dual-zone licensing proposal will work. CGSAs then can be redefined and Phase II licensing for the

³⁵ Comments filed by United States Cellular Corporation ("USCC") argued in support of granting all pending, unopposed Phase II applications. PetroCom supports USCC's proposal to the extent that the pending application resulted from a co-location agreement between a land-based carrier and Gulf carrier.

³⁶ BellSouth's claim that "mass confusion" will result if the Commission does not give it the proposed Coastal Zone is absurd. BellSouth comments, p. 9. Issues involving SAB extensions into CGSAs of adjacent markets are routine in the cellular service. Rules can be adopted for the Gulf, including a hybrid propagation formula, that makes resolution of extension issues routine. See Attachment A.

Coastal Zone commenced at the appropriate time.³⁷ But rather than propose a plan that is fair to both land-based and GMSA licensees, BellSouth simply for its own private interests would like to yank territory from the GMSA licensees, an idea the Commission should reject.

E. The 360° Communications Plan

21. While supportive of the Commission's two zone proposal, 360° Communications opposes those parts of the proposal that permit water-based carriers to put transmitters on land without the consent of the land-based carrier and which suggest adoption of a hybrid formula for contour which extend over land and water. To provide continuous service to the Coastal Zone, 360° Communications proposes grand fathering existing extensions in this area and permitting new de-minimis extensions into the Coastal Zone during the pendency of the rulemaking.

22. 360° Communications opposition to land-based transmitters is founded on the concern that such facilities would result in non-consensual extensions into the CGSAs of land-based carriers. PetroCom's proposed rule regarding land-based transmitters addresses that concern by providing that land based transmitters must not capture the subscriber or roaming traffic of the land-based carrier.³⁸ The issues raised by 360°

³⁷ See PetroCom comments, pp. 14-15.

³⁸ See PetroCom's comments, pp. 11-13.

Communications' engineer in his Declaration are standard engineering issues which can be routinely solved on a case by case basis.³⁹ 360° Communications' concern would be further alleviated by the land-based and water-based carriers entering into co-location or consensual extension agreements. These are approaches which PetroCom has successfully used with one land-based carrier and which PetroCom would welcome the opportunity to discuss with other land-based carriers.

23. 360° Communications' arguments that adoption of a hybrid water propagation formula are without merit. In its comments, PetroCom proposed straight-forward rules which address the issues raised by 360° Communications' engineer.⁴⁰ Standard 30 second terrain data would work fine since the terrain near the Gulf is generally level. Further, using the hybrid propagation formula for both land-based and water-based carriers at the boundary would eliminate most of the problems that carriers experience regarding capture of their traffic by the other carrier. The exhibits to Attachment A to these comments provide an example of a contour using PetroCom's proposed formula. Generation of this contour took PetroCom's engineer only a few minutes.

³⁹ See 360° Communications comments, Declaration of James Stewart.

⁴⁰ Id.

24. To provide uninterrupted service in the Coastal Zone, PetroCom agrees that existing extensions into the Coastal Zone should be grandfathered. However, calculation of these extensions must be based on PetroCom's proposed hybrid propagation formula. To do otherwise would infringe on the water-based carrier's licensed territory and its ability to provide quality service to its customers. PetroCom supports the suggestion that the Commission permit de minimis extensions in the Gulf during the pendency of this rulemaking, provided that the Commission makes it explicit that these extensions are secondary and subject to the Commission's final rules. Further, the extensions must be calculated using the hybrid propagation formula to protect licensed territory of the GMSA carrier.

E. The Centennial Plan

25. Centennial Cellular Corp. ("Centennial") proposes that existing, properly authorized land-based service contours into the Gulf remain undisturbed.⁴¹ Further, the Commission should not dismiss pending applications that are properly grantable under current rules.⁴²

26. To the extent that an existing land-based service contour does not extend into the CGSA of the water-based carrier, as calculated by PetroCom's proposed hybrid propagation formula,

⁴¹ Centennial comments, p. 2.

⁴² Centennial comments, p. 3.

then such contour should be allowed to remain. This proposal is founded on basic fairness and the policy behind the Commission's rules that one carrier cannot infringe on the territory of another carrier without the second carrier's consent. Since existing rules do not properly protect PetroCom's rights and further since many applications were filed in the eastern half of the Gulf taking advantage of the still ongoing 7-year delay with respect to PetroCom's extension application, pending applications should be dismissed.⁴³

F. The Texas 20 Proposal

27. Texas RSA 20B2 Limited Partnership ("Texas 20") proposes that the Commission process applications filed by land-based carriers for alternative propagation showings pursuant to Section 22.911(b) on a case-by-case basis rather than dismissing all such applications as the Commission has proposed.⁴⁴ Further, Texas 20 argues that the public interest would be served by incorporating areas of actual coverage within a carrier's market into the carrier's CGSA.⁴⁵ It also argues that the Commission will cause a "substantial injustice" to Texas 20 if it dismisses its pending Section 22.911(b) application and subjects Texas 20

⁴³ Applications which are the result of an agreement between the land-based and water-based carriers, such as those filed by USCC and PetroCom, should be granted.

⁴⁴ Texas 20 Comments, p. 5.

⁴⁵ Texas 20 Comments, p. 5.

to Phase II licensing.⁴⁶ In the alternative, Texas 20 wants 120 days from a dismissal of its application to file an application to expand its CGSA without facing competing applications.⁴⁷ Texas 20 supports the Commission's proposal to establish a Coastal Zone as long as areas currently receiving service within the Coastal Zone become part of the associated carrier's CGSA.⁴⁸ If a carrier reduces service within the Coastal Zone, its CGSA would be reduced.⁴⁹ Texas 20 also argues that existing licensee be given a one-day filing window to submit applications to make minor modifications to existing facilities to better serve unserved areas, and subject conflicting applications to competitive bidding.⁵⁰

28. The main problem with Texas 20's proposal is that it fails to address the crux of the technical issues confronting land-based carriers and the GMSA licensees, namely, the lack of a consistent way of treating contours over water. Indeed, Texas 20's alternative propagation showing highlights the problem: land-based carriers, pursuant to Section 22.911(b), can demonstrate that their signals actually go further over water

⁴⁶ Texas 20 Comments, p. 6.

⁴⁷ Texas 20 Comments, p. 7.

⁴⁸ Texas 20 Comments, p. 7.

⁴⁹ Texas 20 Comments, p. 8.

⁵⁰ Texas 20 Comments, p. 8.

than what is predicted by the 32 dBu formula contained in Section 22.911(a), thus permitting the land-based carrier to capture traffic within the Gulf carrier's CGSA as would be defined by the GMSA formula contained in 22.911(c). The only way of rectifying the unfair advantage that land-based carriers enjoy is to subject their contours to the same hybrid propagation formula used by GMSA licensees. Once that is accomplished, CGSAs can be redefined and Phase II licensing commenced at the appropriate time.⁵¹ Further, Texas 20 cites no public interest rationale for its 1-day filing window which would preclude other qualified applicants from filing applications to serve unserved areas. Finally, Texas 20's proposal that GMSA licensees lose territory if they reduce service in the Coastal Zone should be rejected. It fails to deal with the Court of Appeal's mandate requiring the Commission to adopt rules that account for the movement of platforms on which GMSA licensees locate cell sites, and will likely result in years of additional litigation at the Court. Recovery rights for GMSA licensees in the Coastal Zone, coupled with allowing secondary service by others, is a reasonable solution that will satisfy the Court's mandate.

⁵¹ Under PetroCom's proposal, if a land-based carrier believes terrain factors would prevent a GMSA formula contour from intruding into another carrier's CGSA in the GMSA, that carrier could submit an engineering showing in support of allowing such facilities. Contour extensions could be grand fathered in the Coastal Zone as long as they did not intrude into another carrier's CGSA, and extensions would be permitted into the Exclusive Zone unless and until a Gulf carrier established facilities. PetroCom comments, pp. 10-11.

III. Licensing Other Services

29. Several commenters discussed whether additional spectrum should be licensed in the Gulf.⁵² The only two commenters who suggested that additional spectrum be licensed in the Gulf were API and SOSCO. API suggests that the Commission should grant the Petition for Rulemaking filed by Gulf Coast MDS Service Company regarding the assignment of MDS licenses in the Gulf.⁵³ API also suggests that the Commission license SMR spectrum in the Gulf.⁵⁴ SOSCO, believing that the Gulf is entitled to the same array of spectrum as is available in the rest of the United States, urges the Commission to license all CMRS spectrum, except PCS, in the Gulf.⁵⁵

30. While API and SOSCO advocate the licensing of SMR spectrum in the Gulf, others are doubtful of the merit of this idea. "CICS is skeptical that sufficient demand exists to justify an expansion of the current SMR service in the Gulf, but will reserve comment until an affirmative showing to the contrary

⁵² See comments of American Mobile Telecommunications Association ("AMTA"), American Petroleum Institute ("API"), Shell Offshore Services Co. ("SOSCO"), Council of Independent Communications Suppliers ("CICS"), Primeco Personal Communications, L.P. ("Primeco"), Benbow PCS Ventures, Inc. ("Benbow") Paging Network, Inc. ("PageNet"), Sprint Spectrum, L.P. ("Sprint Spectrum"), Aerial Communications ("Aerial"), Western PCS BTA I Corporation ("Western") and DW Communications, Inc. ("DW Communications").

⁵³ See API comments at 8.

⁵⁴ See API comments at 7.

⁵⁵ See SOSCO comments at 4.